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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/780,955 | 02/18/2004 | Rosario Rizzo | 71298 | 2343 |
| 23872 | 7590 | 09/29/2004 | EXAMINER | |
| MCGLEW & TUTTLE, PC 1 SCARBOROUGH STATION PLAZA SCARBOROUGH, NY 10510-0827 | | | KEELER, KIMBERLY A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1723 | |

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,955

Applicant(s)

RIZZO, ROSARIO

Examiner

Kimberly Keeler

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kudlaty (US Patent No. 3,341,018).

It is unclear whether applicant has intended to claim a combination or subcombination with the preamble language of 'a filtering device' and the capability of coupling with an aspirator. For examination purposes a subcombination has been deemed to be proper.

Kudlaty (018) discloses a filtering device comprising one hollow body (10) defining a filtering chamber (93) and around this at least one longitudinal channel (63), a first end connection (76), a second end connection (78), a removable filter (50) placed in said chamber, and wherein: the first connection (76) has an entrance anti-chamber (87) that communicates, on the one side, with an entrance passage (24) and, on the other, with an entrance conduit (11) communicating with said filtering chamber (93) and with an entrance compartment (25) that communicates with said longitudinal channel (63) in said body (10), the second connection (78) has an evacuation passage (35)

communicating with an exit conduit (84) communicating with said filtering chamber, and an exit compartment (34) communicating with said longitudinal channel (63) in said body, in the anti-chamber of said first connection a diverter means (80,60) is located and movable between a first position (Figure 4) in which said entrance passage (24) communicates with said longitudinal channel through the entrance compartment (25), and a second position (Figure 3) in which said entrance passage (24) communicates with said filtering chamber (93) through the entrance conduit (11) as described in claim 1. The Kudlaty (018) reference further teaches a diverter means (80,60) consisting of a tubular piece (62) movable around an oscillation axis (2) and having an inlet permanently in line with said entrance passage (24) and an outlet which in said first position is in line with the entrance compartment (25) and in said second position is positioned in line with the entrance conduit (11) as recited in claim 2. The Kudlaty (018) reference discloses the first and second connections are identical in construction and wherein only the first connection is provided with a diverter means as recited in claim 4. Kudlaty (018) also discloses the first and second connections (76,78) consisting of two complementary casings, facing and joined to one another with annular fasteners, wherein every connection is fastened to the respective end of the body (10) and features an internal part (11, 84) associated by sealing with the filtering chamber (93) with the interposition of at least one seal and wherein the conduit (11) communicating with the filtering chamber is in said internal part as described in claim 5. Kudlaty (018) also teaches a diverter means that is movable between said first and said second position and features passages for putting

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alternately into communication the entrance passage with the entrance compartment and with the filtering chamber as recited in claim 6. The Kudlaty (018) reference discloses the first and second connections are identical in construction and wherein only the first connection is provided with a diverter means as described in claim 7.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudlaty (US Patent No. 3,341,018) in view of Jousson (US Patent No. 4,907,744)

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Kudlaty (018) discloses a filtering device comprising one hollow body (10) defining a filtering chamber (93) and around this at least one longitudinal channel (63), a first end connection (76), a second end connection (78), a removable filter (50) placed in said chamber, and wherein: the first connection (76) has an entrance anti-chamber (87) that communicates, on the one side, with an entrance passage (24) and, on the other, with an entrance conduit (11) communicating with said filtering chamber (93) and with an entrance compartment (25) that communicates with said longitudinal channel (63) in said body (10), the second connection (78) has an evacuation passage (35) communicating with an exit conduit (84) communicating with said filtering chamber, and an exit compartment (34) communicating with said longitudinal channel (63) in said body, in the anti-chamber of said first connection a diverter means (80,60) is located and movable between a first position (Figure 4) in which said entrance passage (24) communicates with said longitudinal channel through the entrance compartment (25), and a second position (Figure 3) in which said entrance passage (24) communicates with said filtering chamber (93) through the entrance conduit (11) as described in claim 1. The Kudlaty (018) reference further teaches a diverter means (80,60) consisting of a tubular piece (62) movable around an oscillation axis (2) and having an inlet permanently in line with said entrance passage (24) and an outlet which in said first position is in line with the entrance compartment (25) and in said second position is positioned in line with the entrance conduit (11) as recited in claim 2.

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Kudlaty (018) does not disclose the use of the diverter means as pressed and kept in a first position by a spring and is engaged and linearly movable in a second position by a button.

However, Jousson (744) does teach the use of the diverter means as pressed and kept in a first position (Figure 1) by a spring (27) and is engaged and linearly movable in a second position (Figure 2) by a button (6).

It is considered that it would have been obvious to one of ordinary skill in the art to substitute the sliding mechanical diverter of Jousson (744) for the sliding mechanical diverter of Kudlaty (018) as one structural equivalent for another (i.e. button/spring for a handle manipulation) in a fluid flow environment. Kudlaty (018) teaches a diverter means on page 2 lines 46-52 and describes the use of the handle to manipulate fluid flow to a first or second position. Jousson (744) also teaches a diverter means on page 6 lines 44-50 to divert fluid flow into a first or second position, however, Jousson (744) teaches the use of a pushbutton and spring for manipulation.

The Kudlaty (018) reference also discloses the first and second connections are identical in construction and wherein only the first connection is provided with a diverter means as described in claim 8.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Keeler whose telephone number is 571-272-2460. The examiner can normally be reached on Monday-Friday 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kak
9/24/04


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